IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3202 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KODINAR MUNICIPALITY

Versus

SHRAMJIVI MAJOOR MANDAL

Appearance:

1. Special Civil Application No. 3202 of 2002

MR YV SHAH for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/07/2002

ORAL JUDGEMENT

#. Unfortunately, Mr.Shah, learned advocate, for the petitioner is not present when the matter is called out for final hearing. Mr.Paul, learned advocate, states

that, he has already informed Mr.Y.V.Shah that the matter is on board today. After having waited sufficiently for Mr.Shah, the matter is disposed of on merits in his absence.

#. By filing this petition, the petitioner municipality has challenged the order passed by the Labour Court, Junagadh in Application No.20 of 2000. By the impugned order, the Labour Court has restored the original reference, being Reference (LCD) No.2 of 1999, on the record of the case, and, while restoring the said reference, the municipality is directed to pay the costs of Rs.6000/-, i.e., Rs.1500/- to each of the workmen.

#. It is averred in the petition by the petitioner that the summons of the main reference, i.e. Reference (LCD) No.2 of 1999, was not served on the municipality, and, that is how, the municipality had not remained present. It is further averred that, proper intimation was not sent to the municipality, and, therefore, when the Labour Court itself has failed to discharge its duty in serving the court process properly to the municipality, the Labour Court could not have passed the order of costs against the municipality while restoring the main reference.

#. At the time of issuing the notice, this Court (Coram: Miss R.M.Doshit,J) passed the following order.:

"Heard the learned advocate Mr.Y.V.Shah.

Notice to the respondent returnable on 3rd April, 2002 on condition that the petitioner Municipality deposits a sum of Rs.6,000/- before the Labour Court, on or before the returnable date. Copy of the Rojkam be called for."

Accordingly, as per the order of this Court, the petitioner was directed to deposit Rs.6000/- before the Labour Court.

#. I have gone through the record and proceedings of the case, which is called for. As per the same, it is clear that, intimation was sent by the Labour Court to the petitioner - Municipality, and, in the said intimation, it is stated that, if the petitioner wants to file any reply to the demand of the workmen, the same may be submitted on or before 8.2.2000. It is not in dispute that the said communication was sent by way of Registered Post A.D. and, as per the acknowledgment receipt, the same was received by the Municipality on 19.1.2000. The

said intimation of the Labour Court is at page 69 of the record and at page 71, acknowledgment receipt of the registered post A.D. is there. On behalf of the petitioner, it is stated in the application for restoring the original reference that, since the union has not sent the notice of demand and since the petitioner did not receive the same, the municipality was under the impression that, subsequently, the petitioner will be informed about the date after the demand of the union is served on the petitioner. That averment is made in para 5 of their application, which is at page 24 in the compilation.

#. Considering the facts and circumstances of the case, in my view, the order of the Labour Court imposing the costs against the municipality is not required to be interfered with by this Court, firstly, because after receiving the intimation from the Labour Court at page 69, the municipality has never bothered, at least, to inquire from the Court, as to what has happened in the proceedings. In fact, the municipality could have received the copy of the necessary documents from the record of the Labour Court itself if any inquiry was made from the Court. In the intimation, which is at page 69, it is clearly mentioned that the matter is referred to the Labour Court by the order of the Assistant Labour Commissioner, Porbandar. It is not in dispute that, the said intimation is received by the municipality by way of registered post. However, the grievance of the petitioner is that, since the claim of demand was not received from the union, it was not possible for the municipality to give reply. That may be so. Then also, it was the duty of the municipality to inquire from the Labour Court as to what has happened in the matter, and the municipality has not taken care even to inquire from the concerned Court about the pendency of the aforesaid reference. It is required to be noted that, even the number of the reference is also mentioned in the intimation/summons/notice sent by the Labour Court, wherein even the reference number is mentioned as Reference (LCD) No.2 of 1999. It was the duty of the municipality, therefore, to inquire about the aforesaid reference as specific number of the reference was also mentioned in the intimation. Simply because the municipality was given a particular advice by somebody, as mentioned by the municipality in its application for restoration of the main reference, is no ground for not inquiring from the concerned Labour Court about the said reference for such a long time. In any case, since the municipality has failed to take reasonable care by even making necessary inquiry from the concerned Labour Court,

this is not a case in which, in the extraordinary jurisdiction of this Court, this Court would like to interfere with the impugned order of costs, which is already deposited by the municipality before the Labour Court, as directed by this Court at the time of issuing the notice.

#. Under these circumstances, I do not find any substance in this petition. In my view, therefore, no interference of this Court is called for. Accordingly, the petition is rejected. Rule is discharged with no order as to costs. R & P is ordered to be sent back forthwith to the concerned Labour Court. The Labour Court, Junagadh is directed to dispose of the main reference, being Reference (LCD) No.2 of 1999, at the earliest, and, in any case, by 31.12.2002.

(P.B.Majmudar,J)
(pathan)